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June 13, 2014

VIA ECF

The Honorable Katherine B. Forrest
United States District Court for the
Southern District of New York
500 Pearl Street, Room 1950
New York, NY 10007

Re: Duncan Galvanizing Corporation v. The London Metal Exchange, Ltd, et al., Case No. 14 Civ. 3728 (KBF)

In re Aluminum Warehousing Antitrust Litigation, MDL No. 2481, Master File No. 13 MD 2481 (KBF)

Dear Judge Forrest:

The undersigned respectfully submit this letter in response to the Court's Order of June 10, 2014, (ECF 430).

The case filed by Duncan Galvanizing Corporation on May 23, 2014 ("Duncan Galvanizing" or "zinc case"),[1] is an independent class action concerning a conspiracy to restrain trade and monopolize the market for the warehousing and sale of primary physical zinc.

The zinc case is not an additional direct purchaser aluminum case, and it does not share all the same parties, class periods, products, markets, claims, and class members, with the aluminum cases already before this Court.

The case should not, therefore, be closed by the Clerk of Court. Rather, Duncan Galvanizing should retain its own discrete docket number, even if the Court decides to keep this case as related under Rule 13 of the Rules for the Division of Business Among District Judges, Southern District.

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[1] ECF No. 2, Duncan Galvanizing Corporation v. The London Metal Exchange, Ltd, et al., Case No. 14 Civ. 3728 (KBF).

While to be sure there are similarities between the cases such that counsel in an abundance of caution filed as potentially related under Local Rule 1.6, the aluminum cases and zinc case are in many ways very different cases. While the cases do share some parties and allege a similar manner in which those defendants schemed and conspired to restrain trade, the cases have many substantial differences.

At a minimum, the aluminum cases and the zinc cases involve:

- Different products;
- Different classes;
- Different class members;
- Different class periods;
- Different price premiums;
- Different claims;
- Different damages;
- Different geographic regions;
- Different warehouse operator defendants and queues;
- Different government investigations; and
- Different market dynamics.

These and other key differences make the cases unsuited for consolidation or for anything but limited coordination on an issue-by-issue basis.

Different products. To start, the case concerns the monopolization and restraint of the zinc trade; not the aluminum trade. These are two very different metals that have very different uses and applications, different third-party market participants, and different distribution structures.

Different classes. Since the cases concern different products, the classes each alleges are very different. The zinc case, (14 Civ. 3728), alleges the following plaintiff class:

> All persons or entities that purchased LME U.S. Zinc and paid the Platts Zinc MW SHG Premium or similar price premium in the United States from a primary zinc producer or a Defendant from May 24, 2010, to present (the "Class").

(ECF 2, Case 14 Civ. 3728, at ¶ 122.) On the other hand, the aluminum direct purchaser actions, (14 Civ. 3116), are brought on behalf of a class defined as:

> All persons who from May 1, 2009 forward (a) made a first level direct purchase of aluminum pursuant to a contract with a price term based, in any part, on the Midwest Transaction Price, Midwest Premium, the Platts MW Premium or similar terminology, including but not limited to an averaging over a period of days of any such premium or adjusting for a grade or type of aluminum or (b) purchased aluminum directly from a Defendant.

(ECF 271, 13 MD 2481, at ¶ 320.)

Different class members. The case is brought by a direct purchaser of zinc on behalf of direct purchasers of zinc. Every other case, including every other direct purchaser case, is brought on behalf of aluminum purchasers.

Different class periods. The aluminum case alleges a class period beginning May 1, 2009. The zinc class does not start until more than a year later—May 24, 2010.

Different price premiums. Different price premiums are used in pricing aluminum and zinc. In general, aluminum buyers pay the LME price plus the Midwest Premium (combined sometimes called the Midwest Transaction Price (MWTP)). For zinc, the premium is called the Platts Zinc MW SHG Premium.

Different claims. While aluminum direct purchasers have brought federal and state antitrust and unfair trade practices claims, the zinc case makes only federal claims.

Different damages. Given the different makeup of the classes, it follows that the zinc case seeks a distinct set of overcharge damages from that sought in the aluminum cases. Each set of damages requires a calculation independent of each other. Indeed, the zinc direct purchaser damages and the aluminum direct purchaser damages stand farther apart than the aluminum direct and indirect damages. (Whereas indirect purchaser damages are by definition derivative of direct purchaser damages, the zinc purchaser damages are not derivative of aluminum purchases and represent an entirely separate set of damages that can be calculated without calculating aluminum damages—and vice versa.).

Different geographic regions. Detroit is home to the largest stockpile of LME aluminum in the U.S. The most LME zinc in the U.S. is in New Orleans. Goldman, based in New York, dominates aluminum warehousing from Metro Detroit, Glencore, based in Switzerland, dominates zinc warehousing from Pacorini New Orleans.

Different warehouse operator defendants and queues. Henry Bath, a warehousing company named in the aluminum case, is not named in the zinc case. Zinc queues at Pacorini in New Orleans are a key focus of the case.

Different government investigations. A key aspect of discovery in zinc will be the investigations of the merger of Glencore and Xstrata during the class period. To obtain clearance in the EU, Glencore was forced to divest certain assets and end a certain contractual relationship regarding zinc mining, refining, and marketing due to Glencore's domination of so many aspects of the global zinc trade.

Different market dynamics. There are aspects of Glencore's domination of zinc and zinc warehousing that are unique to the zinc case. The issues have no analogue in the aluminum cases and raise distinct legal and factual questions concerning the degree of control over all aspects of the global zinc trade. In addition to its position in zinc warehousing, Glencore trades physical zinc and zinc derivatives, smelts and refines zinc, and mines and produces zinc concentrate. Glencore sells 100% of primary zinc produced in the United States, trades 60% of the world's zinc, and owns and controls 35% the output of the world's zinc mines, including all U.S. output. The aluminum trade knows no power like Glencore wields in zinc.

* * * *

All these differences will invariably raise numerous different fact discovery issues and expert discovery issues. Different case schedules are now needed and will be as a result of case differences. The zinc case should have its own docket structure and schedule. With regard to aluminum purchasers, the Court has established several separate dockets within this MDL already: for direct purchasers, for commercial end users, for consumer end users, and for direct action plaintiffs. Since, among other things, different products, different purchasers, different damages, different market dynamics, and different roles of key defendants are at issue in the zinc case than in the aluminum cases, there is even more reason that the zinc case should continue to stand as an individual civil action and continue to retain its own docket number, 14 Civ. 3728.

Respectfully submitted,

Linda P. Nussbaum

Counsel for Zinc Plaintiff Duncan Galvanizing Corporation

Christopher Lovell (with permission)

Counsel for Zinc Plaintiff Duncan Galvanizing Corporation

cc: All Counsel of Record in MDL No. 2481 (via ECF and Email)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a copy of the foregoing document to be filed electronically via the Court's electronic filing system on June 13, 2014. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: June 13, 2014.

Respectfully Submitted.

s/ Peter A. Barile III

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